

# Law Office of Jack Silver

708 Gravenstein Hwy North, #407 Sebastopol, CA 95472  
Phone 707-528-8175 Email JSilverEnvironmental@gmail.com



***Via Certified Mail –  
Return Receipt Requested***

November 18, 2016

Timothy Smith - Wastewater Superintendent  
Head of Agency  
Lompoc Reg. Wastewater Reclamation Plant  
1801 W. Central Ave.  
Lompoc, CA 93438-8001

Kevin P. McCune, P.E. - Director  
Department of Public Works  
City of Lompoc  
100 Civic Center Plaza  
Lompoc, CA 93436

Head of Agency  
City of Lompoc Wastewater Division  
1801 W. Central Ave.  
Lompoc, CA 93436

Patrick Wiemiller - City Manager  
Members of the City Council  
City of Lompoc  
100 Civic Center Plaza  
Lompoc, CA 93436

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)**

Dear Messrs. Smith, McCune, and Wiemiller, Heads of Agency, and Members of the City Council:

## **STATUTORY NOTICE**

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring at the City of Lompoc's Regional Wastewater Reclamation Plant ("Facility"), including its associated sewage collection system.

River Watch hereby places the City of Lompoc ("the City"), as owner and operator of the Facility and its associated sewage collection system, on notice that following the expiration of 60 days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued under CWA § 402, 33 U.S.C. § 1342, and the Regional Water Quality Control Board, Central Coast Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged violations of permit conditions or limitations in the City's National Pollutant Discharge Elimination System ("NPDES") permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that the discharge of pollutants is prohibited with the exception of enumerated statutory exceptions (*see* CWA § 301(a), 33 U.S.C. § 1311(a)). One such exception authorizes a discharger who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a discharger in violation of the CWA.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* CWA § 402(b), 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the City's operations in the region at issue in this Notice is the Central Coast Regional Water Quality Control Board ("RWQCB").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with its NPDES permit.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

### **NOTICE REQUIREMENTS**

1. *The Specific Standard, Limitation, or Order Alleged to Have Been Violated.*

River Watch identifies in this Notice the City's violations of permit conditions or limitations set forth in RWQCB Order No. R3-2006-0037 as amended by Order No. R3-2011-0211, NPDES Permit No. CA0048127 ("*Waste Discharge Requirements For the City*").



of Lompoc Regional Wastewater Reclamation Plant”), referred to in this Notice as “the NPDES Permit.” A violation of the NPDES permit is a violation of the CWA.

2. *The Activity Alleged to Constitute a Violation.*

Most often, the NPDES Permit standards and limitations allegedly violated are self-explanatory, and an examination of the language of the NPDES Permit itself is sufficient to inform the City of its failure to fully comply with the NPDES Permit requirements. This is particularly so since the City is responsible for monitoring its operations to ensure compliance with all permit conditions. River Watch sets forth the following narratives, which identify with particularity the activities alleged to be violations. River Watch does so following a review of public records (*e.g.*, the City’s Self-Monitoring Reports (“SMRs”) and the California Integrated Water Quality System (“CIWQS”) reporting system) relating to operations at the Facility and through its associated collection system. Additional records and other public documents in the City’s possession or otherwise available to the City regarding the NPDES Permit and collection system may, upon discovery, reveal additional violations.

River Watch contends that from November 18, 2011 through November 18, 2016, the City violated the Act and the following identified requirements of the NPDES Permit with respect to its effluent discharges and the operation of its sewage collection system. The following prohibitions apply to the City:

A. Effluent Limitations - Discharge Point No. 001

The City’s SMRs identify the following violations (by violation number, date of alleged violation, and pollutant) of effluent limitations imposed under the NPDES Permit:

<u>Year</u>	<u># of Violations</u>	<u>Type</u>
2016	2	Chronic Toxicity Exceeding 1.0 TUc
2015	3	Chronic Toxicity Exceeding 1.0 TUc
2014	4	Chronic Toxicity Exceeding 1.0 TUc
2013	4	Chronic Toxicity Exceeding 1.0 TUc
2012	4	Chronic Toxicity Exceeding 1.0 TUc
2011	1	Chronic Toxicity Exceeding 1.0 TUc

B. Collection System Subsurface Discharges

It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a collection system result in discharges to adjacent surface waters via

underground hydrological connections. River Watch contends untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., in the City's collection system into ground water hydrologically connected to surface waters including, but not limited to, San Miguelito Creek and the Santa Ynez River. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.<sup>1</sup>

Evidence of exfiltration can also be supported by reviewing mass balance data, "inflow and infiltration" ("I/I") data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the City is a violation of the NPDES Permit and thus a violation of the CWA. During the course of discovery River Watch will test surface waters adjacent to sections of the City's collection system to determine the location and extent of exfiltration.

#### C. Receiving Water Limitations

Receiving water limitations are based on water quality objectives ("WQOs") contained in the Basin Plan, are consistent with the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* ("State Implementation Policy" or "SIP"), and are a required part of the NPDES Permit. The NPDES Permit prohibits the City from causing a violation of the receiving water limitations identified in Section V.A.1-25 of the NPDES Permit.

It is the City's burden to prove compliance with this section of the NPDES Permit. River Watch has found nothing in the public record to demonstrate that the City has monitored for and complied with these receiving water limitations. River Watch is understandably concerned regarding the effects of potential unregulated and unmonitored discharges to San Miguelito Creek and Santa Ynez.

---

<sup>1</sup> See Report of Human Marker Study issued in July of 2008 and conducted by Dr Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.



D. Groundwater Limitations

Under the NPDES Permit, activities at the Facility shall not cause exceedances or a deviation from the WQOs for groundwater established by the Basin Plan. The NPDES Permit prohibits the City from causing a violation of the groundwater limitations identified in Section V.B.1-8 of the NPDES Permit.

It is the City's burden to prove compliance with this section of the NPDES Permit. River Watch has found nothing in the public record to demonstrate the City has monitored for and complied with these groundwater limitations. River Watch is understandably concerned regarding the effects of potential unregulated and unmonitored discharges to groundwater.

3. *The Person or Persons Responsible for the Alleged Violations.*

The entity responsible for the alleged violations identified in this Notice is the City of Lompoc as owner and operator of the Facility and associated collection system, as well as those of the City's employees responsible for compliance with the NPDES Permit and the CWA.

4. *The Location of the Alleged Violation.*

The City owns and operates a municipal wastewater collection, treatment, and disposal system that discharges tertiary treated wastewater to San Miguelito Creek. The Facility currently serves approximately more than 54,000 municipal and industrial users and receives wastewater from the City, Vandenberg Air Force Base, and Vandenberg Village Community Services District. Treated wastewater is discharged from Discharge Point No. 001 to San Miguelito Creek, approximately 400 yards upstream of its confluence with the Santa Ynez River - both waters of the United States within the Santa Ynez River Hydrologic Unit. Discharge Point No. 001 to the San Miguelito Creek is located at 34° 39' 47. N Latitude; 120° 28' 55. W Longitude.

During dry months, the combined flow of San Miguelito Creek and effluent from the Facility is the only flow in the Santa Ynez River downstream of the Facility. During high flows, the Santa Ynez River periodically flows over its banks combining with San Miguelito Creek so that discharge from the Facility is direct to the Santa Ynez River.

5. *The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.*

The range of dates covered by this Notice is from November 18, 2011, to November 18, 2016. River Watch may from time to time update this Notice to include all violations of the CWA by the City which occur during and after this period. Some violations are continuous, and therefore each day constitutes a violation.

6. *The Full Name, Address, and Telephone Number of the Person Giving Notice.*

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 S. Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

Jack Silver, Esq.  
Law Office of Jack Silver  
708 Gravenstein Highway North, #407  
Sebastopol, CA 95472  
Tel. 707-528-8175  
Email: [lhm28843@sbcglobal.net](mailto:lhm28843@sbcglobal.net)

David J. Weinsoff, Esq.  
Law Office of David J. Weinsoff  
138 Ridgeway Avenue  
Fairfax, CA 94930  
Tel. 415-460-9760  
Email: [david@weinsofflaw.com](mailto:david@weinsofflaw.com)

### **RECOMMENDED REMEDIAL MEASURES**

River Watch looks forward to meeting with City Staff to tailor remedial measures to the specific operation of the City's Facility and associated collection system.

### **CONCLUSION**

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and/or recreate in the affected communities identified herein. Members of River Watch use the affected watersheds for recreation, sports, fishing,

swimming, hiking, photography, nature walks and the like. Their health, use, and enjoyment of this natural resource are specifically impaired by the City's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of the CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day "notice period"** to promote resolution of disputes. River Watch strongly encourages the City to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the City is in compliance with the strict terms and conditions of the NPDES Permit and the CWA, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

  
Jack Silver

JS:lhbm



*Service List*

Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

✓ Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne St.  
San Francisco, CA 94105

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812 - 0100

Executive Officer  
Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place / Suite 101  
San Luis Obispo, CA 93401

Joseph W. Pannone, Esq.  
Lompoc City Attorney  
ALESIRE & WYNDER LLP  
2361 Rosecrans Ave. Suite 475  
El Segundo, CA 90245-4916